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U.S. DEPT. OF JUSTICE
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

CLARA SCHNEIDER,

Petitioner,

v.

THE STATE

(Town of Irvington),

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE NEW JERSEY COURT OF ERRORS
AND APPEALS**

*Brief of Respondent Opposing
Allowance of Writ of Certiorari*

MEYER Q. KESSEL,
Counsel for Respondent.

JOSEPH C. BRAELOW,
Of Counsel.

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A

The Opinions of the Courts Below

The opinion of the New Jersey Supreme Court is reported at 120 New Jersey Law 460, and appears in the Record on page 32, (and not page 19 as indicated by petitioner). The opinion of the New Jersey Court of Errors and Appeals is not reported, and is shown at page 37 of the Record.

B.

Statement of the Case

The petitioner was convicted of violating the canvassing ordinance of the Town of Irvington, New Jersey. The evidence shows that the petitioner, Clara Schneider, on the day alleged in the complaint, *canvassed from house to house* in the Town of Irvington, New Jersey, and offered to leave, and did leave, books or booklets, and solicited or received contributions in the form of money; that the petitioner did not apply for or obtain a permit from the Police Department in conformance with the ordinance (R 14-16):

Federal Questions Presented

The federal question presented by petitioner (petition 3) poses whether the Irvington ordinance may legally "require persons to secure a license to *circulate and distribute* printed matter——." *Circulate and distribute* printed matter where? On the street corners? In public buildings at public affairs? No, from house to house. Petitioner neglects to include in the question here presented the stipulated fact (R 9, lines 1-12) that the petitioner was canvassing from house to house for the sale of printed matter for money.

The petitioner further overlooks, in framing the question presented to this Court, the fact that the Irvington ordinance (R 14-16) was conceded by her to be a reasonable exercise of the police power, in the courts below (R 33 lines 22-26.) Nor is it contended here that the ordinance is unreasonable, or that it is not a proper exercise of the police power.

Respondent therefore respectfully urges that the true federal question presented here for review is as follows:

Whether a municipal ordinance, enacted in the proper exercise of the police power in furtherance of the public welfare, and conceded to be reasonable, may require persons to secure a permit (for which there is no charge), to canvass from house to house for the sale of printed matter in exchange for money, without violating the due process clause of the Fourteenth Amendment.

Argument

ANSWER TO PETITIONER'S POINT ONE

THE IRVINGTON ORDINANCE, OF ITSELF AND AS APPLIED TO THE ACTS OF THE PETITIONER, IS CONSTITUTIONAL AND VALID, BECAUSE IT IS A REASONABLE AND PROPER EXERCISE OF THE POLICE POWER, IN FURTHERANCE OF THE PUBLIC WELFARE, AND ANY ALLEGED CONSTITUTIONAL RIGHTS OF FREE SPEECH AND FREE PRESS ARE SUBJECT TO THE SAME. THE CASE OF *LOVELL VS. CITY OF GRIFFIN*, 303 U. S. 444, DISTINGUISHABLE AND THEREFORE INAPPLICABLE.

Petitioner does not argue here that the ordinance in question (R 14-16) is an unreasonable exercise of the police power, but on the contrary admitted its reasonableness in her argument in the lower courts (R 33 lines 22-26); nevertheless she contends that the application of the ordinance to her acts makes it invalid under the Federal Constitution.

It is universally recognized that the constitutional rights of individuals are subject to a proper exercise of the police power, whether the same be exercised by a state or the United States. Mr. Justice Field, speaking for the Supreme Court of the United States in *Barbier vs. Connolly*, 113 U. S. 227, 5 Sup. Ct. 357, commented in the following language:

"But neither the amendment (Fourteenth Amendment), broad and comprehensive as it is, nor any other amendment, was designed to interfere with the power of the State, sometimes termed as police power, to prescribe regulations

to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

And again, in *Mugler vs. State of Kansas*, 123 U. S. 623, 8 Sup. Ct. 273, it was said:

"It cannot be supposed that the states intended, by adopting that amendment (Fourteenth), to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community."

The police power, however, must be exercised in a reasonable manner and bear a direct and substantial relation to the public welfare. It is argued that this is precisely what was done in the case at bar.

Our ordinance (R 14-16) *does not prohibit canvassing*. It merely requires that those who canvass make themselves known to the police, obtain and carry a means of identification, and show good character and freedom from fraud of the project for which they are canvassing. There is no fee. Photographing and fingerprinting are for aid in investigation and identification. The furnishing of the information required is for the purpose of establishing good character and freedom from fraud. The requirements are not onerous and are in every way reasonable. Any person who is entitled to canvass can readily comply.

The value of the plan in furnishing a ready means of check-up, preventing frauds, burglaries and robberies, and aiding in identifying persons who are in a position to gain information with respect to persons and places against whom and where crime may be

profitably committed, is evident. It is an aid both in the prevention and the detection of crime. All persons must submit to such regulations for the common welfare.

The requirement is no more burdensome and no less reasonable than is the statute requiring the carrying of an automobile driver's and owner's card. Canvassing is limited to daylight hours between 9:00 A. M. and 5:00 P. M., to prevent the calling upon people at their homes at unreasonable hours, and in furtherance of the public protection.

Certainly the welfare of the public, as demonstrated by our ordinance, is paramount to the alleged rights of the petitioner under the cases hereinbefore set forth.

Defendant seeks solace from the case of *Lovell vs. City of Griffin*, 303 U. S. 444. A mere cursory comparison between the ordinance construed in the *Lovell* case and our ordinance, will disclose the glaring difference so that even "he who runs may read."

The language of Mr. Chief Justice Hughes significantly points out what is lacking in that ordinance. He states:

"The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise.' There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution

of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager."

In short, the ordinance *was not enacted for the public welfare*. The ordinance in the case at bar will be found to be in complete compliance with the *very self-same things* which Mr. Chief Justice Hughes found wanting in the ordinance there under consideration. Our ordinance provides that as to time, canvassing is limited to the hours between 9 A. M. and 5 P. M.; as to place, canvassing from house to house; as to purpose, the development and protection of the common welfare. It is conceded to be reasonable by the defendant, and was enacted in the interest of the public safety. It would appear therefore, that no more need be said on this score.

Moreover, the petitioner here was *canvassing from house to house* in a neighborhood in the Town of Irvington, and was selling booklets or pamphlets to the *people at their homes*, without first complying with the *regulatory measures contained in our ordinance*. In the Lovell case, the defendant was distributing literature, an act not in any way regulated by that ordinance. The distinguishing features between the two cases so compared, make that case inapplicable to the situation here presented.

Petitioner would have this Court believe that the New Jersey Court of Errors and Appeals holds that there is a distinction between "mere distribution" of books and "mere canvassing" for the sale of the same. No such distinction was made either factually or by inference. The distinction made by the said court was between mere distribution without a permit (which was not regulated by that ordinance); and the *canvass-*

ing from house to house without a permit, as in the present case, in violation of the provisions of our ordinance which *regulated* the same and which was enacted for the protection of the people.

Petitioner does not make clear, why our ordinance does not apply to the dissemination of printed information by canvassing from house to house. She does not argue that the ordinance is unreasonable, or that it is not a proper exercise of the police power. From what can be gleaned, she seems to contend that the dissemination of printed matter by canvassing, as here, does not yield to the proper exercise of the police power. That is fundamentally unsound in law.

ANSWER TO PETITIONER'S POINT TWO

PETITIONER'S ACTS DO NOT CONSTITUTE RELIGIOUS WORSHIP WITHIN THE MEANING OF THE UNITED STATES CONSTITUTION. THE ORDINANCE OF THE TOWN OF IRVINGTON IS A PROPER EXERCISE OF THE POLICE POWER, AND CONSEQUENTLY OF ITSELF AND AS APPLIED TO THE ACTS OF THE PETITIONER IS CONSTITUTIONAL.

In *Davis vs. Beason*, 133 U. S. 333, 33 L. Ed. 637, the definition of "religion" within the meaning of the United States Constitution is interpreted by Mr. Justice Field, who speaking for the United States Supreme Court, said:

"The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter."

The petitioner canvassing from house to house, for the sale of pamphlets for a consideration, certainly was not engaged in the worship of God within the meaning of the United States Constitution, and she is within the purview of the ordinance, which was within the power of the municipality to enact. There is no question here of prohibition. It is rather a simple question of reasonable police regulation; regulations which have for their purpose safeguards against those who are not so concerned with ideals and morals, and who may resort to any guise, in-

nocent or otherwise, in order to further their illegal schemes and objectives.

There is no religious question here; nor is there any quarrel with the religious beliefs of the petitioner. It is the *canvassing* by petitioner (although allegedly done in furtherance of or because of her religious beliefs) which is subject to the proper exercise of the police power.

In passing, it is to be noted that some of the contents of the booklets cannot fairly be termed "religious beliefs". Attention is more specifically called to page 259 of the exhibit entitled "The Golden Age".

Conclusion

Although the subject matter raised in the lower courts concerned the State and Federal Constitutions, *there is no true controversial Federal question here involved.* The distinction between the *Lovell vs. City of Griffin* case and the case at bar is so obvious, and so palpably distinguishable, as to make that case *inapplicable here*; further it is so fundamental in law that the rights of persons are subject to the proper exercise of the police power, as here, that the irresistible conclusion reached must be that there is nothing before this Court which presents a controversial issue worthy of its consideration, and therefore it is respectfully urged that the within petition be denied.

● Respectfully submitted,

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Dated: March 10th, 1939.